

## S E C T. IV.

## Competitions between Gifts of Escheat.

1588. *December.* GRAHAM against GRAHAM.

## No 25.

The first gift with the first intended action was preferred to the second gift, though clothed with possession.

THOMAS GRAHAM, son of the second wife of umquhil Laird of Knockdolzean, as donatar to the gift of his father's liferent, fallen be escheat, persewed for declarator upon the same gift, and the guids and gear that pertained to his father to appertain to him be reason of the gift of his escheat. Compeared Mungo Graham, and being admitted for his interest, *alleged*, That he had the gift of the said Laird's escheat, and albeit his gift was posterior to the other, yet he became first in possession. It was *answered*, That the other party was *prior tempore*, and had first intended action, *et qui prior agat prior appellat*; and as to the possession, it appeared to be simulate betwixt the said Mungo and young Knockdolzean, he being his sister's son. THE LORDS found the first gift with the first intentit action to have place.

*Fol. Dic. v. I. p. 347. Colvil, MS. p. 433.*

1590. *January.* COLLUTHIE against DUNDAS.

## No 26.

In a competition between two gifts of escheat, the second, on which declarator was first raised, was preferred.

THE Laird of Colluthie persewit William Dundas fiar of Fregosk to hear and see him to have tynt his liferent of the lands of Fregosk, as being year and day at the horn. It was *allegit*, That he could not be decernit to tyne his liferent at the instance of the persewar, because there was ane disposition made of his liferent for being year and day at the horn, at the instance of three sundry o-ther persons, to James Colvin of East Wemyss, long before the disposition made to the Laird of Colluthie; the whilk disposition made to the Laird of Wemyss was intimate to the said William Dundas, and sua he could not have two liferents; but the first gift with the first intimation aught to have place, as was the daily practise in gift of wairds, of marriages, and gifts of non-entries, where there proceeds double gifts of them frae the Prince, the first gift and the first intimation following thereupon has place; and the Prince after he has once disponit and made a donatar and ordained composition for the escheat, may not again dispone; for utherwayis it wad be to his disponer quasi crimen stellionatus, eandem rem disponere duobus; et princeps lege contractus tenetur, nec debet laqueum alteri immittere, vel jus alteri acquisitum tollere. To this was *answerit*, That albeit the Laird of